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December 13, 2010

**VIA CM/ECF & FEDERAL EXPRESS**

Hon. Madeline Cox Arleo, U.S.M.J.  
United States District Court  
District of New Jersey  
M.L. King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: BanxCorp v. Bankrate, Inc.  
Civil Action No. 07-3398 (SDW) (MCA)**

Dear Judge Arleo:

This firm represents Bankrate, Inc. ("Bankrate") in the referenced matter. Bankrate submits this letter in response to plaintiff BanxCorp's correspondence to Your Honor dated December 9, 2010.

In its December 9 letter, BanxCorp requests that Your Honor enter two orders concerning discovery issues, all of which are the subject of applications pending before Your Honor. In support of its request for the entry of the orders, BanxCorp has not bothered to make any formal motion, or even to seek leave to file any motion as required by Your Honor's individual rules. Moreover, BanxCorp has provided Your Honor with absolutely no basis for entry of either proposed order. We object to BanxCorp's attempt to circumvent the rules and request the opportunity to be heard before the Court enters either order.

The proposed orders themselves are highly objectionable, both in substance and in form. For example, the direction proposed in paragraphs 3 and 4 of the "Supplemental Pretrial Scheduling Order" (relating to "Attorneys Eyes Only", or AEO, designations) is either unnecessary or impossible to enforce, or both. In accordance with directions given by Your Honor on October 5, Bankrate has carefully tailored the AEO designations, so that only undeniably competitively sensitive information has been designated as AEO. In his letter, counsel does not identify a single instance of an unwarranted AEO designation, because there are none. Instead, he asks Your Honor to enter a patently unenforceable order directing Bankrate to remove unidentified "improper" AEO designations.

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BanxCorp's proposed "Supplemental Discovery Confidentiality Order" is similarly objectionable; it asks Your Honor to enter an order that would permit plaintiff to use confidential discovery produced in this case for the purpose of pursuing claims in other cases, in effect allowing it to take discovery in this case for use in those cases before any discovery has been allowed to proceed. That is a patently improper purpose, and BanxCorp should not be permitted to conduct litigation that way.

As for counsel's letter to Your Honor, most of the letter discusses issues that have been fully discussed in letters to the Court. I will address, however, counsel's allegation that Bankrate has obstructed justice in violation of Title 18, United States Code, section 1512(c). That allegation is not simply frivolous; it is irresponsible and scurrilous. Bankrate has not altered any documents, nor have we. As has become the norm in this matter, BanxCorp did not contact us before making its absurd allegation directly to the Court, so we have no idea what BanxCorp uses as the basis for its allegation. We invite BanxCorp to identify any document or documents that have been "corruptly" altered or destroyed for the purpose of impairing the document[s]' integrity. BanxCorp did not provide any documents to Your Honor in support of its bizarre allegation because there are no such documents.

We will be more than happy to address the merits of any of the issues raised by BanxCorp on January 20, 2011 (the date set by Your Honor for the next discovery status conference) or on whatever schedule Your Honor deems appropriate. In the meantime, we continue to produce documents and other information according to the schedule set by agreement of the parties on the record before Your Honor on October 5.

Respectfully submitted,



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cc: Nelson E. Canter, Esq. (via CM/ECF)  
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